

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

MATTHEW G.

Claimant,

v.

EASTERN LOS ANGELES REGIONAL  
CENTER,

Service Agency.

OAH Case No. 2010100868

**DECISION**

Administrative Law Judge Sophie C. Agopian, Office of Administrative Hearings, heard this matter on May 19, 2011, in Alhambra, California. Claimant Matthew G.<sup>1</sup> was represented by his parents, Hugo and Esther. Supervisor Margarita Duran represented the Eastern Los Angeles Regional Center (Service Agency or ELARC).

Testimonial and documentary evidence was received during the hearing. The record was closed and the matter was submitted for decision on May 19, 2011.

**ISSUE**

Whether Service Agency may terminate day care services for claimant?

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<sup>1</sup> Claimant's and his family's surnames are omitted to protect their privacy.

## FACTUAL FINDINGS

1. Claimant is a ten-year-old Service Agency consumer with a diagnosis of autism. He lives with his parents and younger brother who is five years old.

2. Claimant is currently receiving 30 hours per week of Service Agency-funded day care services. The services have been in effect for several years pursuant to claimant's Individual Program Plans (IPPs), and have been provided to claimant because both of his parents work full-time outside of their home and have requested that claimant receive day care services after school and during school breaks. The most recent IPP providing for such service is dated January 2011.

3. On September 3, 2010, Service Agency provided claimant with written notice that it intended to terminate his parent-vendored day care services effective October 31, 2010. The reason stated for the proposed termination was:

Day care services are not specialized service [*sic*] that are directed toward the alleviation of a developmental disability. Any child under the age of 13 would require day care service. Additionally, we have requested that you apply for the Options Program which is a generic resource that serves the general public by providing day care services at a low cost or at no cost to you.

4. Claimant's parents appealed the Service Agency's decision within enough time to allow claimant to continue to receive the day care services pending a final decision on the appeal. Thus, claimant is currently receiving the service pending the outcome of the hearing and pursuant to an IPP developed in January 2011.

5. Claimant is in the third grade. He is enrolled in a special day class with the support of one teacher and up to three aides for eight children, most with "moderate" autism. He receives speech services and adaptive physical education, although he is ambulatory and verbal. Claimant requires the most assistance, at school, with toileting because he is prone to remove all of his clothes and has trouble adequately wiping himself. In addition, claimant requires assistance with eating, is sensitive to noise and has difficulties with transitions.

6. Because of claimant's adaptive skills delays, claimant's parents prefer that he receive day care in their home, provided by his grandmother, who knows him best and who is willing to help him with intimate self-care tasks. It was not established that claimant's grandmother has any special skills or training in caring for children with autism, except that she is uniquely qualified by reason of her familial relationship to claimant and her years of experience in caring for him.

7. Claimant's parents pay claimant's grandmother \$1,400 each month in order to care for claimant before and after-school and during weekdays when school is not in session, or when claimant is sick, in order to allow his parents to work. On average, claimant's grandmother cares for claimant for up to six hours each weekday.

8. Claimant's parents were unable to estimate how much money she is paid per hour to provide such service because when they hired her, they agreed to pay her a monthly salary so that she would be able to resign from other employment and earn comparable income. Claimant's grandmother specifically resigned from another job in order to care for claimant. Although claimant's grandmother's primary responsibility is to care for claimant, she also cares for claimant's younger brother in the afternoons when he returns home from kindergarten. According to claimant's parents, Service Agency reimburses their family \$480 each month for the day care services. Thus, the family pays out of their own pocket about \$920 each month. They have also hired claimant's grandmother to provide claimant with in-home support services (IHSS), funded by the county, for about 56 hours each month at a cost of nine dollars per hour. Thus, claimant's grandmother's total monthly salary for providing day care and IHSS to claimant is roughly \$1,800. Additionally, the family may pay her or another person to provide respite on the weekends. According to the January 2011 IPP, claimant receives 20 hours per month of parent-vendored respite as well.

9. Claimant's parents contend that they are required to pay a premium for child care due to claimant's developmental disability. They did not, however, establish that any portion of the salary that is paid to claimant's grandmother for day care services exceeds what a day care provider, babysitter, or nanny, would earn to provide the same service to a non-disabled child in the area that they live in. On the contrary, they admitted that they negotiated her salary so that it would be comparable to what she was earning from her other employment in order to induce her to resign from her job and become claimant's day care provider. Thus, the amount of her salary is not, necessarily, dispositive of the type or quality of services she provides. Furthermore, claimant and his family are receiving, in exchange for the salary arrangement, the additional benefits of having a relative provide the day care in their home for both of their children when needed.

## LEGAL CONCLUSIONS

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) governs this case. (Welf. & Inst. Code, § 4500 et seq.)<sup>2</sup> The purpose of the Lanterman Act is twofold: to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community (§§ 4501, 4509, and 4685), and to enable them to approximate the pattern of everyday living of non-disabled persons of the same age and to lead more independent and productive lives in the community. (§§ 4501 and 4750-4751.) Accordingly, persons with developmental disabilities have certain statutory rights, including the right to treatment and habilitation services, and the right to services and supports based upon individual needs and preferences. (§§ 4502, 4512, 4620, and 4646-4648). Consumers also have the right to a "fair hearing" to determine the rights and obligations of the parties in the event of a dispute. (§§ 4700-4716.)

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<sup>2</sup> All statutory references are to the Welfare and Institutions Code unless otherwise specified.

2. The determination of which services and supports are necessary for a consumer is made through the IPP process. The IPP must be developed through a process of individual needs determination, which may include the consumer, the consumer's parents, a legal guardian or conservator, or authorized representative. The consumer and the family must have the opportunity to actively participate in the development of the plan. (Welf. & Inst. Code, § 4646, subd. (b).) The IPP must include a statement of the consumer's goals and objectives based on the consumer's needs and preferences or, when appropriate, the needs and preferences of the consumer's family. (§ 4646, subd. (a).) The development of the IPP must include consideration of a range of service options proposed by the IPP participants, the effectiveness of each option in meeting the goals stated in the IPP, and the cost-effectiveness of each option. (§ 4512, subd. (b).)

3. Section 4648 describes the activities for which regional centers are responsible in order to achieve the stated objectives of a consumer's IPP, including securing needed services and supports. Services and supports for persons with developmental disabilities means "specialized services and supports or special adaptations of generic services and supports directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with a developmental disability, or toward the achievement and maintenance of independent, productive, normal lives." (Welf. & Inst. Code, § 4512, subd. (b).) Services and supports may include day care. (*Id.*)

4. "Day care" is defined under section 4686.5, subdivision (a)(4), which prohibits regional centers from purchasing day care services to replace or supplant respite services for consumers. For purposes of that section, "day care" is defined as "regularly provided care, protection, and supervision of a consumer living in the home of his or her parents, for periods of less than 24 hours per day, while the parents are engaged in employment outside of the home or educational activities leading to employment, or both."

5. If a service agency seeks to change a service previously provided to a consumer, it has the burden to demonstrate that its decision is correct, because the party asserting a new claim or proposing changes generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9; Evid. Code, § 500 ["a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting."]) Service Agency must prove by a preponderance of the evidence that its decisions are correct because no other law or statute (including the Lanterman Act) requires otherwise. (Evid. Code, § 115.)

6. In this case, Service Agency seeks to terminate its funding of Claimant's day care services pursuant to other provisions of the Welfare and Institutions Code that require Service Agency to consider the family's responsibility in providing services to their minor child, including the following:

Effective September 1, 2008, regional centers shall ensure, at the time of development, scheduled review, or modification of a consumer's individual program plan developed pursuant to Sections 4646 and 4646.5, or of an individualized family service plan pursuant to Section 95020 of the Government Code, the establishment of an internal process. This internal process shall ensure adherence with federal and state law and regulation, and when purchasing services and supports, shall ensure all of the following:

(1) Conformance with the regional center's purchase of services policies, as approved by the department pursuant to subdivision (d) of Section 4434.

(2) Utilization of generic services and supports when appropriate.

(3) Utilization of other services and sources of funding as contained in Section 4659.

(4) Consideration of the family's responsibility for providing similar services and supports for a minor child without disabilities in identifying the consumer's service and support needs as provided in the least restrictive and most appropriate setting. In this determination, regional centers shall take into account the consumer's need for extraordinary care, services, supports and supervision, and the need for timely access to this care.

(§ 4646.4, subd. (a).)

When purchasing or providing for a voucher for day care services for parents who are caring for children at home, the regional center may pay only the cost of the day care service that exceeds the cost of providing the day care services to a child without disabilities. The regional center may pay in excess of this amount when a family can demonstrate a financial need and when doing so will enable the child to remain in the family home.<sup>3</sup>

(§ 4685, subd. (c)(6).)

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<sup>3</sup> California Code of Regulations, title 17, section 543268, subd. (d), implements this statute by way of a prohibition. "Regional Center shall not: (1) use purchase of service funds to purchase services for a minor child without first taking into account, when identifying the minor child's services needs, the family's responsibility for providing services to a minor child without disabilities. In such instances, the regional center must provide exceptions, based on family need or hardship."

7. Section 4659 states, in relevant part:

(a) [T]he regional center shall identify and pursue all possible sources of funding for consumers receiving regional center services. These sources shall include, but not be limited to, both of the following:

(1) Governmental or other entities or programs required to provide or pay the cost of providing services, including Medi-Cal, Medicare, the Civilian Health and Medical Program for Uniform Services, school districts, and federal supplemental security income and the state supplementary program.

(2) Private entities, to the maximum extent they are liable for the cost of services, aid, insurance, or medical assistance to the consumer.

[¶] ... [¶]

(c) This section shall not be construed to impose any additional liability on the parents of children with developmental disabilities, or to restrict eligibility for, or deny services to, any individual who qualifies for regional center services but is unable to pay.

8. By reason of Factual Findings 1 through 9, cause exists to terminate claimant's day care services because claimant's day care services are not "specialized services and supports" within the meaning of section 4512, subdivision (b). Service Agency made the determination to terminate the services prior to September 2010 and promptly notified claimant about its decision and claimant's right to an appeal. Claimant's parents did not, however, establish that claimant's day care services are "specialized" and necessary under the Lanterman Act. They failed to establish that claimant is receiving a "specialized" form of day care, which is different from the type of day care that any other child might receive when his or her parents work. Thus, claimant's parents' monthly expenses for daycare are to enable them to work, and to provide supervision to both of their children during portions of the day. They are not for the purpose of "alleviating [claimant's] developmental disability." (§ 4512, subd. (d).) Claimant is receiving additional support, such as IHSS, special education services, and respite to assist him with his disability. The evidence did not establish that he requires further support from Service Agency to allow him and his family to benefit from day care.

## ORDER

For the reasons set forth in Legal Conclusions 1 through 8, claimant Matthew G.'s appeal is denied. Service Agency may terminate the day care services that were offered pursuant to claimant's January 2011 IPP.

DATED: June 8, 2011

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SOPHIE C. AGOPIAN  
Administrative Law Judge  
Office of Administrative Hearings

## NOTICE:

**This is the final administrative decision in this matter. Each party is bound by this decision. An appeal from the decision must be made to a court of competent jurisdiction within 90 days.**